

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

DAVID M. BATCHELDER,)	
)	SHB NO. 92-10
Appellant,)	
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
CITY OF SEATTLE and HUGH)	AND ORDER
AINSLE (Applicant),)	
)	
Respondents.)	

This matter came on for hearing on the merits before the Washington State Shorelines Hearings Board in Seattle, Washington, on September 15, 1992. It is the appeal of the City of Seattle's conditionally approved Shoreline Substantial Development Permit issued to Hugh Ainslie for the proposed construction of three detached single family living units and the remodeling of an existing residence waterward of the new construction.

The appeal, SHB 92-10, was filed with the Board on February 28, 1992.

Appellant David M. Batchelder represented himself. Respondents City of Seattle appeared through Assistant City Attorney Robert D. Tobin, and Respondent Ainslie, was represented by J. Richard Aramburu, Attorney at Law.

Court Reporter Lenore E. Elliott of Gene Barker & Associates, Olympia, WA, recorded the proceedings.

Present for the Board were Annette S. McGee, Presiding, Chairman Harold S. Zimmerman, Attorney Member Robert V. Jensen, Nancy Burnett, David Wolfenbarger and O'Dean Williamson.

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Witnesses were sworn, testimony given and exhibits admitted and examined. The Board visited the site of the proposed project, accompanied by all parties.

From the foregoing, the Board makes the following

FINDINGS OF FACT

I

The site is an 11,951 square foot waterfront lot at the northeast corner of Everett Avenue E. and Boyer Avenue E. in the Portage Bay neighborhood, Seattle, WA. The site is zoned Lowrise 3 (L-3), with an Urban Residential (UR) shoreline environment overlay. Currently the site contains a non-conforming, small, dilapidated single-family residence near the lakeshore, with no other structures. Access to the house is gained via a driveway off Everett Avenue E.

Everett Avenue E. is a short, twenty (20) foot wide roadway within a forty (40) foot right of way running along side of the proposed project. It deadends at a small embankment leading down to the lakeshore. Boyer Avenue runs immediately behind the site.

The site is covered with overgrown vegetation, especially near the shoreline, where a multitude of vines, cattails, and other vegetation make it difficult to distinguish between upland and the wetland.

The water depth of the wetlands in the winter is just inches.

II

The surrounding area is developed with a variety of structures, ranging from single family homes to multi-unit apartment buildings.

III

The site was purchased in 1989 by applicant Hugh Ainsle, as one parcel, and in January, 1992, the City approved a short subdivision to divide the area into four (4) parcels.

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1 The subdivision was not appealed and became final with several conditions including, but not
2 limited to, utility improvements, street improvements, and drainage changes. (Exhibit A-7).

3 4 IV

5 Ainsle applied for a Shoreline Development Permit to retain the existing non-
6 conforming residence located on the site on the lot nearest to the water, and to build a new
7 single family residence on each of the three remaining upland lots. Access to each of the four
8 structures to be from Everett Avenue.

9 V

10 The proposed three new buildings, plus the existing one will be located on the four
11 lots, which we will identify A, B, C, D for the purpose of these findings with A closest to
12 Boyer Avenue and D being the lot with the existing residence closest to the Portage Bay
13 shoreline. (Exhibit A-9).

14 Proposals for parcels A, B and C contain three floors of living space over a basement
15 parking level.

16 VI

17 Appellant Batchelder lives in a single family residential structure near Boyer Avenue,
18 on the adjoining lot north of the proposed project, and uphill from the existing structure on
19 parcel D. Batchelder's residence has two stories with a daylight basement.

20 VII

21 To the south of Everett Avenue, sits a two story single family residence downhill and
22 southeast of Batchelder's residence.

23 VIII

24 To create and preserve view corridors, the proposed project needed what Seattle calls
25 "design departure" approval to meet view corridor and open space requirements. The SSMP

1 requires a view corridor of not less than thirty-five percent (35%) of the lot width. Because of
2 the property dimensions of approximately seventy-six and one-half feet in width at Boyer
3 Avenue, narrowing down to approximately forty-three feet in width at the shoreline, the
4 proposed residences on parcels A, B and C were designed to meet the required open space and
5 view corridors, which necessitated a waiver in the setbacks.
6

7 IX

8 Section 23.60.198 of the SSMP provides that the "Director may reduce or waive the
9 yard setback requirements of the underlying zoning", when view corridors are required.
10 However, there is no specific criteria for the decision of a waiver.

11 X

12 In approving the permit and "Design Departure" in January, 1992, the City applied the
13 provisions in the SSMP for view corridors and waived the side setbacks. This created and
14 provided existing view corridors adjacent and parallel to Everett Avenue on parcels A,
15 B and C.

16 XI

17 Batchelder filed an appeal that largely raises the issue of view blockage because the
18 completion of the project will block a portion of his ninety-eight percent (98%) present view.

19 XII

20 The exhibit offered by respondents shows that eighteen percent (18%) of Batchelder's
21 present view will be blocked. This is the view to the southeast where the two story house,
22 Finding of Fact VII, is located along with a marshy area where the depth of water reduces to
23 inches in the winter.

24 Batchelder will still maintain eighty percent (80%) of his present view, looking directly
25 out over Portage Bay toward the Seattle Yacht Club and the University of Washington.

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XIII

The City approved the short plat subdivision separate from the Shoreline Substantial Development Permit so as not to circumvent the use and development standards of the Shoreline Master Program applicable to a single lot development. The proposal meets the Master Program general development standards for all shoreline environments (SSMP 23.60.152); the general residential development standards (SSMP 23.60.198); the use and development standards for the UR environment (SSMP 23.60.540-578); and the criteria for Substantial Development permits (SSMP 23.60.030).

XIV

Seattle's decision involved three determinations (Exhibit A-7):

- 1) consideration of a short subdivision, approved January 9, 1992;
- 2) consideration of a design departure under the City's Land Use Code, approved January 9, 1992; and
- 3) the shoreline substantial development permit.

These issues were combined in a decision to approve the Shorelines Substantial Development Permit with conditions on January 30, 1992.

XV

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

I

This Board has jurisdiction over the parties and subject matter of this appeal.
RCW 90.58.180.

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II

The general rule under the SSMP is that: "[r]esidences on waterfront lots shall not be located further waterward than adjacent residences." SSMP Sec. 23.60.198(B)(1). It is determined in this instance, that the "adjacent residence" to the Batchelder property is the vacant house on the water on parcel D. Since the new residence is behind the existing residence, the Board concludes that the new residence is not subject to shoreline setback requirements.

III

The fact that the existing residence on the respondent's property is nonconforming is not relevant in this context. The Board concludes that the SSMP rule applies to the adjacent residence without regard as to whether the residence is conforming or nonconforming under the SSMP or LUC.

IV

Even if the foregoing were not legally correct, the view blockage is very minimal of "actual views of the water" which are to be protected by the SSMP. See SMMP Sec. 23.60.002. The view lost is not of the water, but of a relatively minimal view of the wetland area southeast of Portage Bay.

V

The extent of the view blockage involved in this appeal is not enough to call for denial or modification of the applicant's project. The Board concludes that the appellant, even with the applicant's project in place, still enjoys a majority of the view of water previously available.

1
2 VI

3 The Board further concludes that the project is consistent with the provisions of the
4 SSMP regarding view corridors from the public property and right-of-way on Boyer Avenue.
5 The preservation of the public views caused the structures on the lots to be shifted slightly
6 north and closer to the Batchelder property which is allowed under Seattle's view preservation
7 and design departure policies.

8 VII

9 The proposed development is consistent with the SSMP policies because it provides
10 additional residential housing, consistent with the scale of the neighborhood. The three new
11 houses will not create a solid wall, but rather three separate structures with space between each
12 building to prevent the appearance of a solid wall.

13 VIII

14 The Board finds that the City acted correctly in providing combined review of the
15 proposed subdivision, design review and the shoreline substantial development permit, and
16 concludes that there is no benefit served in separating these decisions. Indeed, the Shoreline
17 Act cautions against piecemeal, uncoordinated decisions. However, the procedures followed
18 by the City in this case have assured that the entire development/property division and physical
19 construction were reviewed under the SSMP and the SMA.

20 IX

21 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
22 From the foregoing, the Board issues this:


ORDER

The approval of Seattle's Shoreline Substantial Development Permit No. 9006144 as conditioned is hereby AFFIRMED.

DONE this 27th day of November, 1992.

SHORELINES HEARINGS BOARD


ANNETTE S. MCGEE, Presiding *by 273.*


HAROLD S. ZIMMERMAN, Chairman

(See Minority Opinion)

ROBERT V. JENSEN, Attorney Member


NANCY BURNETT, Member


DAVID WOLFENBARGER, Member

(See Minority Opinion)

O'DEAN WILLIAMSON, Member

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FINAL FINDINGS OF FACT,
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Appellant,)	MINORITY FINAL FINDINGS
)	OF FACT, CONCLUSIONS OF
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THE CITY OF SEATTLE and)	
HUGH AINSLE,)	SHB No. 92-10
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Respondents.)	
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This matter was heard by the Shorelines Hearings Board on September 15, 1992, in Seattle, Washington. The Board was comprised of: Annette S. McGee, presiding, Harold S. Zimmerman, Robert V. Jensen, Nancy Burnett, Dave Wolfenbarger and O'Dean Williamson.

David Batchelder, appellant, appeared pro se, respondent, the City of Seattle ("Seattle") appeared by Robert D. Tobin, Assistant City Attorney; and respondent Hugh Ainsle appeared through J. Richard Aramburu, attorney at law.

Having heard the testimony, examined the exhibits, heard oral argument, reviewed the briefs of Mr. Batchelder and the City of Seattle, and viewed the site the Board makes these:

FINDINGS OF FACT

I

In July 1989, Hugh Ainsle, a developer, purchased the 11,951 square-foot subject parcel which abuts Portage Bay. This rectangular property slopes from the water up to Boyer Avenue, for approximately 160 feet along the northerly property line. The property is bordered on the east by Everett Avenue East, which ends in a dead-end cul-de-sac near the waterfront. Mr. Ainsle purchased the property, which was zoned LW3 (allowing low rise

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1 apartments) for \$275,000. Under the Seattle Master Program, the shoreline designation for
2 this property is urban residential.
3

4 II

5 The subject parcel contains an existing, delapidated, one-story, single-family residence
6 near the lakeshore, with no other structures. This residence is currently non-conforming as to
7 the Everett Avenue setback and the maximum width. This structure was erected in 1953. The
8 lakeshore neighborhood, lies southeast of the SR 520 overpass, running from I-5 across
9 Portage Bay to the Evergreen Point Floating Bridge. It contains a mixture of single and
10 multiple family residential structures and a large, publicly owned marsh. Uphill, across Boyer
11 Avenue is a large, single-family residential neighborhood, which includes two recently
12 constructed large three-story residences across the street, one lot northwest of the subject site.

13 III

14 Mr. Batchelder lives in a single family residential structure which lies uphill near Boyer
15 Avenue from the existing single family structure on the subject parcel. The Batchelder
16 residence has two stories and a daylight basement. To the north lie two single family parcels
17 which contain residences which are landward of the Batchelder residence. North of these
18 structures is a single family residence structure which lies somewhat waterward of the
19 Batchelder residence. To the north of that structure is an apartment building which extends
20 over the water. North of the apartment, lie two improved single family residential lots, and
21 the SR 520 bridge, which cuts across Boyer Avenue at an angle towards the subject property.

22 IV

23 To the south of Everett Avenue East, sits a two-story, single-family residence, which
24 lies upland of the single family residence on the subject property. The shoreline, south of Mr.
25 Batchelder's residence, extends waterward and forms a marsh which is undeveloped and

1 publicly owned. This marsh extends along the entire southerly end of Portage Bay, until it
2 reaches the SR 520 bridge on the east.
3

4 V

5 Mr. Ainsle hired an architect firm, Vaughn/Knudson, which approached Seattle
6 with a concept for single family residences on the subject parcel. The architects asked Seattle
7 officials how to get such a proposal approved. The city responded that the path through the
8 codes was circuitous.

9 VI

10 The architects submitted to Seattle a master use permit application for the future
11 construction of three single family residences on Mr. Ainsle's property. The master use
12 application was composed of three segments: (1) a short subdivision to divide the existing
13 property into four single family residential parcels; (2) design departure, to allow waiver of the
14 required setbacks and (3) a shoreline substantial development permit. The city approved the
15 first two elements on January 9, 1992, and the third element on January 30, 1992.

16 VII

17 The short plat application depicts four single-family residential parcels, with structures
18 on them, designated as parcels A-D, running from Boyer Avenue to the waterfront.

19 During the short plat review, Seattle considered the shoreline setback requirement for
20 any new structures on the Ainsle property. Seattle concluded that the existing setback line is
21 determined by drawing a straight line from the nearest shoreside corners of the two residences
22 on property adjacent to the Ainsle property. This line which is shown in orange on Ex. 9,
23 runs diagonally northwest-southwest across the site upland from the existing residence and
24 over the middle of proposed parcel C, to a two-story frame residence, which sits to the
25 southeast of the Ainsle property.

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VIII

Despite the fact that the short plat application showed that the proposed house on parcel C would violate this setback line, Seattle approved the short plat. Mr. Batchelder submitted comments on the short plat, but chose to appeal the shoreline permit decision rather than the short plat.

IX

Seattle applied the master program provision for view corridors to the resulting single family lots and waived the required setbacks. This would create a "view corridor" adjacent and parallel to; and northerly of Everett Avenue East on parcels A-C. This view corridor would protect existing public views. The waiving of yard setback requirements, would move the proposed structures (on parcels A) five feet, and those on parcels B and C, ten feet closer to the Batchelder residence.

X

The proposed construction of a 30 foot high single family residence on parcel C would obliterate views from the Batchelder residence of the undeveloped marsh which borders the southerly end of Portage Bay. This view includes a narrow strip of the surface waters of Portage Bay that abut the marsh. The remaining shoreline view from the Batchelder residence, which includes the apartment to the north, the SR 520 bridge, Portage Bay and Mountlake to the Northeast, is considerably screened in the time of foliage, by weeping willows on the Batchelder property.

XI

The favored shoreline view from the Batchelder residence is obviously toward the publicly owned marsh. This appears true also for the proposed homes on parcel A-C because

1 only the house on parcel C will enjoy a full front view; the front views from parcels A and B
2 will be blocked substantially by the house on parcel C.
3

4 XII

5 Seattle considered the existing residential shoreline on parcel D to be on an adjacent
6 property, in respect to the newly created parcel C; thereby creating a new setback line (colored
7 red on Ex. 7), running from the Batchelder residence to the residence on parcel D. Based on
8 this decision, Seattle considered the proposed residence on parcel C to be landward of the
9 shoreline setback line.

10 XIII

11 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

12 From these Findings of Fact, the Board issues these:

13 CONCLUSIONS OF LAW

14 I

15 Decisions to grant shoreline substantial development permits must be consistent with
16 the policies of the Shoreline Management Act and the applicable master program.
17 RCW 90.58.140(2)(b).

18 II

19 The legislature found in RCW 90.58.020 in pertinent part, that:

20 . . . ever increasing pressures of additional uses are being placed on the shorelines
21 necessitating increased coordination in the management and development of the
22 shorelines of the state.

23 III

24 Accordingly, the legislature directed, among other things, that:
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1 coordinated planning is necessary in order to protect the public interest associated with
2 the shorelines of the state while, at the same time, recognizing and protecting private
3 property rights consistent with the public interest. There is, therefore, a clear and
4 urgent demand for a planned, rational, and concerted effort, jointly performed by
5 federal, state, and local governments, to prevent the inherent harm in an uncoordinated
6 and piecemeal development of the state's shorelines. RCW 90.58.020.

7 IV

8 The Shoreline Management provides for limited alteration of the natural conditions of
9 the shorelines of the state as follows:

10 Alterations of the natural condition of the shorelines of the state, in those limited
11 instances when authorized, shall be given priority for single family residences, ports,
12 shoreline recreational uses including but not limited to parks, marinas, piers, and other
13 improvements facilitating public access to shorelines of the state, industrial and
14 commercial developments which are particularly dependent on their location on or use of
15 the shorelines of the state and other developments that will provide an opportunity for
16 substantial numbers of the people to enjoy the shorelines of the state. RCW 90.58.020.

17 V

18 The Seattle Master Programs goals and policies contain the following goals regarding
19 access:

20 Goal:

21 1. Provide for the optimum amount of public access - both physical and visual - to the
22 shorelines of Seattle.

23 . . .

24 2. Preserve and enhance views of the shoreline and water from upland areas where
25 appropriate.

26 Ex. CR-3, Resolution 25173, (B)(1) and (2);

1
2 VI

3 The implementing guidelines of the Seattle Master Program provide the following
4 specific guidance pertaining to view protection on Lake Union and Portage Bay:

5 All environments in Lake Union and Portage Bay shall provide for some open
6 water and protect views of the lake and bay.

7 Restore and enhance the lake's natural environment.

8 Ex. CR-2, Resolution 27618, Implementation Guideline A2, at 6.

9 VII

10 The Seattle Master Program contains the following relevant provisions relating to
11 shoreline setbacks and protection of view:

12 It is the purpose of this chapter to implement the policy and provisions of the
13 Shoreline Management Act of 1971, the Shoreline Goals and Policies of
14 Resolution 25173 and the Shoreline Implementation Guidelines of
15 Resolution 27618 by regulating development of the shorelines of City in order
16 to:

17 4. Preserve, enhance and increase views of the water and access to the water.

18 Seattle Master Program, Section 23.60.002(4).

19 Residences on waterfront lots shall not be located further waterward than
20 adjacent residences. If there are no other residences within one hundred feet
21 (100') residences shall be located at least twenty-five feet (25') back from the
22 line of ordinary high water.

23 Seattle Master Program, Section 23.60.198(B)(1).

24 A. A view corridor of not less than thirty-five percent (35%) of the width of
25 the lot shall be provided and maintained on all waterfront lots and on any

1 upland through lot separated from a waterfront lot designated CM, CR, CP or
2 CH by a street or railroad right-of-way.

3 B. View corridors are not required for single-family dwelling units.

4 Seattle Master Program, Section 23.60.576(A) and (B).

5 D. Single-family residences on both waterfront and upland lots shall meet the
6 yard requirements of the underlying zoning.

7 E. Multi-family developments shall meet all development standards of the
8 underlying zoning including modulation and structure width and depth, provided
9 that, where view corridors are required, the Director may reduce or waive the
10 yard and setback requirements of the underlying zoning. Where view corridors
are not required, yards and setbacks of the underlying zoning shall be required.

11 Seattle Master Program, Section 23.60.198(D) and (E).

12 Where view corridors are required in the Shoreline District, yards and/or
13 setbacks of the underlying zoning may be reduced or waived by the Director,
14 where view corridors are not required by the Shoreline District, yards and/or
setbacks of the underlying zoning shall be required.

15 Seattle Master Program, Section 23.60.014(B)(4).

16 VIII

17 The Seattle Master Program contains the following direction regarding use of the
18 Shoreline Policies, which include three Shoreline Implementation Guidelines and the Shoreline
19 Goals and Policies:

20 The shoreline policies shall be considered in making all discretionary decisions
21 in the Shoreline District and in making discretionary decisions on lands adjacent
22 to the shoreline where the intent of the land use code is a criterion and the
23 proposal may have an adverse impact on the shoreline district. They shall also
24 be considered by the Director in promulgation of rules, and, interpretation
25 decisions. The Shoreline Policies do not constitute regulations and shall not be
26 the basis for enforcement actions.

1 Seattle Master Program, Section 23.60.004(A) and (B).

2 IX

3 The Shoreline Management Act and the Seattle Master Program are to be liberally
4 construed to give full effect to the objectives and preparer of the Shoreline Management Act.
5 RCW 90.58.900; Seattle Master Program, Section 23.60.012.

6 X

7 The Shoreline Management Act contains an imperative that shoreline decisions be made
8 in a coordinated, as opposed to piecemeal fashion. The project proponent, from the beginning
9 has presented a proposal for the construction of three single family homes on a shoreline
10 property. It is axiomatic that the property must be platted to allow more than one
11 single-family dwelling on an undivided parcel of land.

12 By segmenting this plat decision, from the Shoreline substantial development permit
13 decisions, Seattle has rendered the otherwise governing shoreline setback requirement
14 inapplicable to this project. Put another way, had Seattle considered the two decisions
15 simultaneously, the proposed residence on parcel C would necessarily be required to set back
16 such that it would not obliterate the view from the Batchelder residence of the undeveloped
17 shoreline to the southeast. This sort of phasing of a project, which avoids application of
18 important Shoreline Management Act and Master Program policies and regulations to shoreline
19 substantial development, is contrary to both the letter and spirit of the Shoreline Management
20 Act.

21 XI

22 In 1976, the Supreme Court expressly affirmed the following conclusions of law,
23 applicable to view intrusion on Lake Washington:

24
25
26 MINORITY FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 If one house sits far ahead of the others, then for that one person's financial
2 benefit, he would be allowed to cause a drastic intrusion into the aesthetics of
3 the neighborhood and a tremendous financial loss to all the neighbors.

4 Ecology v. Pacesetter, 89 Wn.2d 203, 208, 571 P.2d 196 (1977). In that decision, the
5 court acknowledged that: "many cases hold protection of aesthetic values alone justify the
6 exercise of policy power without payment of compensation."

7 Id., at 211.

8 Pacesetter was followed by a similar decision applied to mobile homes placed on the
9 shores of Lake Chelan. Hunt v. Anderson, 30 Wn. App. 437, 446, 635 P.2d 156 (1981).

10 XII

11 Seattle developed its standard for shoreline setbacks following the decision in
12 Pacesetter. This setback provision is obviously designed to protect the views of residences on
13 the sides of waterfront residential lots. Seattle admits that the shoreline setback provision
14 would preclude the proposed location of a residence on lot C, (forward of the shoreline setback
15 line between the Batchelder residence and the single family structure to the south of Everett
16 Avenue East), were the Ainslee property still one parcel. This is because
17 Section 23.60.198(B) precludes the location of residences on waterfront lots waterward of the
18 adjacent residences. It then argues that because Mr. Batchelder did not appeal the short plat
19 decisions, he should not be allowed to raise the shoreline setback as a basis for challenging this
20 project.

21 The problem with Seattle's argument is that by not applying the original shoreline
22 setback requirement, as part of the shoreline decision-making process, those aesthetic policies
23 of the act and the master program, which are designed to benefit single family residential
24 owners, are rendered meaningless. The proper procedure was for Seattle to consider the plat

1 and substantial development permits simultaneously, and entertain a request for a variance
2 from the regulations of Seattle's Master Program.

3 XIII

4 The Seattle Master Program, Implementating Guidelines direct that all shoreline in
5 Portage Bay "shall . . . protect views of the Lake and Bay." Seattle Master Program
6 Implementing Guidelines, Implementation Guidelines A2, at 6. No distinction is made
7 between public and residential views. The Shoreline Goals protect not only public, but all
8 views "of the shoreline and water from upland areas where appropriate" (Emphasis added.)
9 Seattle Master Programs, Goals and Policies, (B) ACCESS, Goal 2. In furtherance of this
10 goal, the master program contains the following policy: "Provide standards and criteria for
11 view and visual access from upland and shoreline areas."

12
13 Id., Policy (a). This policy does not state a preference for water, over shoreline views.

14 IX

15 Seattle and Mr. Ainslee argue that protection of frontal views is enough to satisfy the
16 Shoreline Management Act and the Master Program. This argument misses the point of the
17 Pacesetter and Hunt cases, and of the Seattle Master Program setback requirement. It is
18 obvious that a setback line cannot and does not protect frontal views. Such a line, by its very
19 nature can protect only side views. The fact that this principle protects only shoreline side
20 views cannot and should not denigrate the importance of such views. The evidence in this case
21 makes it clear that, insofar as the Batchelder residence is concerned, the side view to the
22 southeast, is the only view from that residence of natural shoreline. It is not at all peculiar or
23 unexpected that Mr. Batchelder has chosen to screen his frontal view, which if unobtruded,
24 would be dominated by the SR 520 bridge across Portage Bay.

1 The Shoreline Management Act prefers the natural over the unnatural, by limiting
2 alteration of the natural conditions of the shorelines. RCW 90.58.020.

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4 X

5 The evidence reveals that the view being blocked is largely of marsh shoreline, as
6 opposed to the surface waters of Portage Bay. As indicated above the act is designed to
7 protect the natural shoreline. This protection is addressed by the policies which protect, "the
8 land and its vegetation and wildlife, and the waters of the lake and their aquatic life."
9 RCW 90.58.020. These policies provide the basis for the acts strong protection of wetlands,
10 including marshes.

11 XI

12 The Seattle Master Program is to be interpreted in a way that makes it consistent with
13 the policies of the Shoreline Management Act. Indeed, the master program itself states that it
14 is to be liberally construed, "to give full effect to the objectives and purposes of chapter 90.58
15 RCW. The State Shoreline Management Act of 1971."

16 The contention that only water views are important in the shorelines, not only ignores
17 the ecological linkage between surface waters and marshes, for example, but is inconsistent
18 with the strong policy of the act to protect not just the waters of the state, but the natural
19 shorelines of the state. Moreover, the Shoreline Goals and Policies (which constitute part of
20 the Shoreline Policies of the Master Program, and are to be utilized in interpreting the Seattle
21 Master Program), contain a separate goal for preservation and enhancement of both the views
22 of the shoreline and water from upland areas.

23 XII

24 This policy provides the basis for provision 23.60.198(B)(1) of the Master Program,
25 which contains the shoreline setback requirement. Side yard views, may or may not contain or

1 be dominated by water, depending on the topography and the relative straightness or regularity
2 of any particular ordinary high water mark. The protection of shoreline and water views
3 provides for some side yard view regardless of these factors. Without such a policy
4 interpreting the master program, the master program arguably would be inconsistent with the
5 policies of the Shoreline Management Act. Seattle reads its master program as protecting
6 views of the water at the expense of views of marsh shorelines. This interpretation is not
7 supported by the Shoreline Management Act.¹ Where there is a conflict between a state
8 regulation, (which the Seattle Master Program qualifies as, RCW 90.58.120), the statute must
9 control. Coast Pacific v. Department of Revenue, 105 Wn.2d 912, 917, 719 P.2d 571 (1986).
10 Administrative regulations adopted pursuant to express statute authorization should be
11 construed so that no portion of the state's regulation is void. Downtown Traffic Planning v.
12 Royers, 26 Wn. App 156, 164-65, 612 P.2d 430 (1980). This result is avoided by reading
13 the master program liberally, to be consistent with the purposes of the Shoreline Management
14 Act, and by giving the above-referenced goal regarding views its plain and apparent meaning.

15 XII

16 Seattle maintains that the proposal should be characterized as multi-family
17 development. However, the master program only provides for two alternatives for residential
18 development; single or multi-family. This development must be one or the other.

19 XIII

20 The ostensible reason for this approach is to allow Seattle to require a public view
21 corridor adjacent to Everett Avenue East. The master program requires view corridors in
22 multi-family developments, but not in single family developments. Seattle Master Program
23

24 ¹ Even RCW 90.58 320, which provides for specific maximum height limitation to protect views does not restrict
25 the views to be protected to "water views."

1 Sections 23.60.014(B)(4); 23.60.198(D) and (E); 23.60.576 (A) and (B). There can be no
2 question, that once Seattle authorized the platting of the subject property, the four distinct,
3 single-family parcels, the shoreline development became single, as opposed to multi-family in
4 nature. The project proponents deliberately chose single-family residential development,
5 because they believed it fit the "grain of the neighborhood."
6

7 XIV

8 Seattle, having made that choice, must abide the consequence, which requires
9 adherence to the regularly required setbacks for such development. If those setbacks are not
10 varied, there will be less of a view corridor, but the widened Everett Avenue East will remain
11 as a public view corridor. The setback requirement will provide additional space between the
12 Batchelder's residence and the proposed residential structures. This is consistent with the
13 policy of the shoreline management act which recognizes private property rights consistent
14 with the public interest. RCW 90.58.020.

15 XV

16 Having concluded that Seattle's application of design waivers to single-family
17 developments is not allowed under Seattle's Master Program, it is unnecessary to reach the
18 issue, (which has not been raised in this litigation by the parties, but which is of potential
19 public interest), of whether such design waivers impermissible are precluded by the Shoreline
20 Management Act's express provision for variances from the use regulations of master
21 programs. RCW 90.58.100(5)

22 XVI

23 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
24 From the foregoing, the Board issues this:
25

26 MINORITY FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB NO. 92-10

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MINORITY OPINION

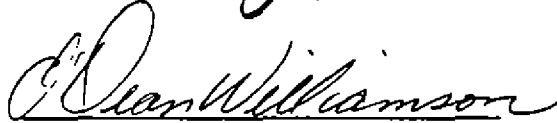
If we had been in the majority, we would have ordered that the substantial development permit issued by Seattle to Doug White for Hugh Ainsle be vacated.

DONE this 24th day of November, 1992.

SHORELINES HEARINGS BOARD



ROBERT V. JENSEN, Member



O'DEAN WILLIAMSON, Member

S92-10M